

# **FAMILY COURT MATTER**

## **Response to Motion for Contempt of Court**

Use these Instructions to complete the following court forms to respond to the contempt action:

*Notice of Motion and Responsive Motion (DIV1502)*

*Affidavit in Support of Responsive Motion (DIV1503)*

*Affidavit of Service by Mail (SOP104)*

*Parenting / Financial Disclosure Statement (FAM108)*

## IMPORTANT NOTICES

THE COURT EXPECTS EVERY PERSON WHO APPEARS IN COURT WITHOUT A LAWYER TO KNOW AND FOLLOW THE LAW. IF YOU ACT AS YOUR OWN LAWYER, YOU MUST DO WHAT A LAWYER WOULD DO.

- COURT PERSONNEL AND THE COUNTY ATTORNEY'S OFFICE **CANNOT** HELP YOU FILL OUT THE FORM(S) IN THIS PACKET.
- YOU SHOULD SEE A LAWYER IF YOU DON'T KNOW HOW TO ANSWER THE QUESTIONS ON THESE FORMS OR IF YOU THINK THE OTHER PARTY WILL HIRE A LAWYER.
- AS YOU FILL OUT THE FORM(S) IN THIS PACKET YOU **MUST** FOLLOW THE INSTRUCTIONS.
- TYPE YOUR ANSWERS OR PRINT NEATLY USING DARK INK.

## INSTRUCTIONS

Helpful materials may be found at your public county law library. For a directory, see <http://www.lawlibrary.state.mn.us/cllppubdir.rtf> . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

The other party has filed Contempt of Court papers with the Court alleging that you have failed to obey the Court's order and further alleging that you are in Contempt of Court.

You have the right to be represented by an attorney if you are being accused of Contempt of Court. You may have an attorney appointed by the court to represent you at no cost to you if you are financially eligible. To find out if you qualify for a court-appointed attorney, ask the Court Administrator for an application for a court-appointed attorney.

## What “Contempt of Court” Means

Only a judge can determine whether someone is in "Contempt of Court." "Contempt of Court" is a decision by a judge that someone who has been ordered to do something knew about the *Order*, and has knowingly and without good reason disobeyed the *Order*. Because a judge can order the contemnor (the person who disobeyed) to be put in jail until he or she obeys the *Order*, extra safeguards are built into the procedures to ensure that the person who might be put in jail is treated fairly.

## Two-Part Hearing Process Required

The court cannot put you in jail simply because the other party says that you disobeyed a court order. In most cases, there will be several hearings.

### I. FIRST-STAGE HEARING

At the first hearing the court will decide if:

1. You knew the contents of the prior *Order*;
2. You disobeyed the prior *Order*, but had a good reason for disobeying it; OR
3. You disobeyed the prior *Order* and did not have a good reason for disobeying.

If the court decides that you obeyed the *Order* or that you disobeyed the order but had a good reason for disobeying it, then the motion for contempt will be denied. Even if a request for contempt of court is denied, the court may still grant other relief that is appropriate to the case, such as requiring the person to pay money, cooperate in visitation, follow future court orders, etc.

If the court decides that you disobeyed the prior *Order* and did not have a good reason for disobeying it, and if the court also decides that putting you in jail will make you obey the *Order*, the court must tell you that incarceration is a possibility, advise you to obtain an attorney, and explain that if you cannot afford an attorney, one will be appointed.

If you tell the judge that you want to speak with an attorney, a second hearing will be scheduled. If you waive your right to an attorney, the court may conduct the hearing at that time. The court may not punish you and put you in jail for not following the *Order* because that would be a criminal matter. The court may only put you in jail if the court believes that you have the ability to do what is ordered and that you have willfully refused to do it, and that putting you in jail will cause you to obey the prior *Order*.

If the court finds that you knew the contents of the prior *Order*, willfully failed to follow it, and that jail or the threat of jail may reasonably cause compliance with the court *Order*, the court may immediately sentence you to jail, or may “stay” (not immediately enforce) the jail sentence to give you time to “purge” (correct) the prior behavior by doing what the prior court *Order* required. The court may also

require you to do other things, such as pay money, cooperate in visitation, follow future court *Orders*, etc.

## II. REVOCATION HEARING

If the court sentences you to jail, but gives you a chance to purge (cure) the contempt, and you do not do what you were supposed to do cure the problem, the other party may wish to have you jailed. In order to do that, certain forms asking for a hearing for revocation of the stay must be served upon (given to you) and filed with the court.

At the revocation hearing, the court will decide one of the following:

1. You have purged (cured) the contempt; OR
2. You have not purged (cured) the contempt, but jailing you is not necessary to cause obedience and, therefore, you will not be jailed; OR
3. You have not purged (cured) the contempt, and jailing you is likely to make you obey the *Order* and, therefore, you should be immediately jailed.

If the court decides to order you to jail, you must stay in jail until you purge the contempt by obeying the court *Order* (for example, by paying overdue support, or allowing visitation, or agreeing to follow all future court orders). It is often said that the person in jail "holds the keys to the jail" because that person controls when he or she is released.

### Step 1

#### Fill Out the *Notice of Motion and Responsive Motion Form*

Fill out the *Notice of Motion and Responsive Motion* form included in this packet. This form tells the court and the other party that you do not believe you are in contempt of court.

**FILL IN THE TOP PART OF THE FORM (this is known as "the caption"):**

**NOTE:** The information to fill in the top part of the form can be found at the top of your Divorce or Paternity *Decree* or other existing *Order*. Be sure to copy the information EXACTLY as it is on your current *Order*.

- Write the name of the county where your case is located, the number of the judicial district for that county, and the case number that is also called the "court file number." This information is found on your existing *Order*.
- On the line marked "Name of Petitioner," write the name of the Petitioner as listed on your current *Order* or Divorce or Paternity *Decree*.
- On the line marked "Name of Respondent," write the name of the Respondent as listed on the current *Order* or Divorce or Paternity *Decree*.

- On the "TO" line, write the full name and street address of the other party.
- Fill in the date, time, and location of the hearing (this should be copied from the other party's papers).

**FILL OUT THE REST OF THE FORM:**

**NOTE:** The following instructions are numbered the same as the questions on the *Notice of Motion and Responsive Motion* form.

1. On the first line of paragraph/question 1, write the name of the other party. On the second line, write the date of the *Order* that the other party claims you have disobeyed.
2. You do not need to answer this question.
3. Read the *Verification and Acknowledgement* carefully.

**By signing your name you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the court or if you are serving or filing this document for an improper purpose, the court can order you to pay money to the other party or impose other sanctions.**

**DATE AND SIGN THE *NOTICE OF MOTION AND RESPONSIVE MOTION* FORM.**

## Step 2

### Fill Out the *Affidavit in Support of Responsive Motion* Form

Fill out the *Affidavit in Support of Responsive Motion* form that tells the court and the other party what you are asking for from the court and WHY you are asking for it.

- Fill in the top part of the form (caption) the same way you did on the *Notice of Motion and Responsive Motion* form.
- On the blank line after "State of Minnesota, County Of \_\_\_\_\_" fill in the name of the county where you will sign the *Affidavit*.

**NOTE:** The following instructions are numbered the same as the questions on the *Affidavit in Support of Responsive Motion* form.

1. Write in your name on the blank line above paragraph/question 1.
2. Check off whether you are the Petitioner or Respondent in this case as listed on your *Divorce Decree* or other existing *Order*.

3. The other party is telling the court that you have violated a court *Order*. Check off whether you did or did not receive a copy of that court *Order* prior to receiving the other person's court papers to find you in contempt. Write in the date of the specific court *Order*. This is in paragraph/question 1 of the other party's *Motion*. If the other party is claiming you violated more than one *order*, add additional lines to answer question 3 regarding each separate *Order* or *Decree*.
4. Check either (a) or (b):
  - a. Check (a) if you believe you obeyed the Order and then on lines tell the court exactly what you did to obey the order (include dates, check numbers, or other information that may prove to the court that you obeyed the Order). If the other party is claiming you disobeyed more than one *Order*, add additional lines or pages to answer 4(a) and 4(b) with regard to each *Order* or *Decree*.
  - b. Check (b) if you did not obey the *Order* but had a good reason for not obeying the *Order* and then on lines tell the Court your reason for not obeying the *Order*.

If the other party is claiming you have violated a court *Order* that involves your ability to pay an obligation, such as child support or spousal maintenance, you may wish to consider using the *Parenting / Financial Disclosure Statement* form (form number FAM108). If you do use the *Parenting / Financial Disclosure Statement* form, you should serve and file the form with the court at or before the contempt hearing. The form can be found at the Court Administrator's Office or at [www.mncourts.gov/forms](http://www.mncourts.gov/forms).

Sign the *Affidavit in Support of Responsive Motion* under penalty of perjury. By signing your name under penalty of perjury, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are filing these documents just to harass the other party or without good legal reason, or if you mislead the court, the court can make you pay money to the other party. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

## Step 3

### Make Copies of Forms

- Make **two** copies of the *Notice of Motion and Responsive Motion* form and all attachments, and **two** copies of your *Affidavit in Support of Responsive Motion* form and all attachments.
- Keep **one** copy of each form for yourself (make sure to bring your copies with you to Court on the day of your hearing).
- Step 4 tells you how to give the second copy of each form to the other party. Step 6 tells you how to file the forms with the court.

## Step 4

### Serve Notice on the Other Party

You must arrange for the other party to receive complete copies of all documents you have prepared for the hearing. This is called "service of process." **A party to an action CANNOT serve the other party to the action.** Papers also CANNOT be served on Sunday or on a legal holiday. You must have someone else over the age of 18 serve the other party.

#### **TO SERVE THE PAPERS BY MAIL, FOLLOW THESE INSTRUCTIONS:**

- The server places **one copy** of the completed *Notice of Motion and Responsive Motion* form **AND one copy** of your completed *Affidavit in Support of Responsive Motion* form **and all attachments** in an envelope. Then the server writes your return address and the last known address of the other party on the front of the envelope. The server places the correct amount of postage on the envelope (the server may want to take the envelope to the post office to be weighed to make sure (s)he puts on the right amount of postage).
- The server must mail to the other party (or to his/her attorney if there is one) the envelope containing the forms **at least 8 days before the hearing date**, (unless the judge has issued an Order stating some other requirement.) **Note:** If your response raises new issues not raised in the other party's motion, you must mail the papers at least **13 days** before the hearing.
- **WARNING: YOU CANNOT MAIL THE ENVELOPE CONTAINING THE FORMS YOURSELF. YOU MUST HAVE SOMEONE ELSE OVER THE AGE OF 18 MAIL THE FORMS.**

#### **TO SERVE THE PAPERS PERSONALLY, FOLLOW THESE INSTRUCTIONS:**

- Have someone else over the age of 18 hand the *Notice of Motion and Responsive Motion* and the *Affidavit in Support of Responsive Motion* to the other party **at least 5 days before the hearing**, (unless the judge has issued an Order stating some other requirement.) **Note:** If your response raises new issues not raised in the other party's motion, you must serve the papers at least 10 days before the hearing.
- **Warning: The court will ignore your response if you do not serve and file the responsive papers on time. If you do not know if your papers raise new issues, and you are unsure of the deadline for serving the papers, ask an attorney for advice, or serve the papers at least 13 days before the hearing by mail, or at least 10 days before the hearing personally.**

## Step 5

### The Person Who Handed the Forms To or Mailed the Papers To the Other Party Must Fill Out the *Affidavit of Service* Form

#### **IF THE PAPERS WERE SERVED BY MAIL, FOLLOW THESE INSTRUCTIONS:**

The person who mailed the forms to the other party must fill out the *Affidavit of Service by Mail* form included in this packet. This form proves to the court that the other party received a copy of the *Notice of Motion and Responsive Motion and Affidavit in Support of Motion*.

- The person who mailed the envelope containing the forms must fill in the top part of the form just as was done on all the other forms.
- Fill in the following:
  1. The name of the person who mailed the envelope;
  2. The date of birth of the person who mailed the envelope;
  3. The date on which the person put the envelope in the mail;
  4. The address of the other party; and
  5. The city and state where the envelope was put in the mail.

The person who delivered the forms must sign the *Affidavit of Service by Mail* under penalty of perjury. By signing the *Affidavit* under penalty of perjury, the server is stating that the information in the *Affidavit* is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

- **After** it has been signed, make **one copy** of the *Affidavit of Service by Mail* for your records.

#### **IF THE PAPERS WERE SERVED PERSONALLY, FOLLOW THESE INSTRUCTIONS:**

The person who hand-delivered the forms to the other party must fill out the *Affidavit of Personal Service* included in this packet.

1. Fill in the names of the Petitioner and the Respondent and the case number;
2. After “County of \_\_\_\_\_,” fill in the name of the County where the server will sign the *Affidavit*;
3. After “I,” the server writes in his or her name and birth date;



4. Fill in the name of each form served on the other party;
5. Fill in the name of the party served; and
6. Fill in the server's address and telephone number.

The person who delivered the forms must sign the *Affidavit of Personal Service* under penalty of perjury. By signing the *Affidavit* under penalty of perjury, the server is stating that the information in the *Affidavit* is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

- **After** it has been signed, make **one copy** of the *Affidavit of Personal Service* for your records.

## Step 6

### File the Forms With the Court

**At least 5 days before the hearing date**, hand-deliver the documents listed below to the Court Administrator. **If your papers raise new issues** not included in the Notice of Motion and Motion, you must file the papers with the Court Administrator **at least 10 days** before the hearing date. You can mail them to the court, but you must put them in the **mail at least 8 days before** the hearing (or 13 days if the papers raise new issues.)

File these documents:

- The *Notice of Motion and Responsive Motion* and all attachments;
- The *Affidavit in Support of Responsive Motion* and all attachments;
- The *Affidavit of Service by Mail*, or *Affidavit of Personal Service*; and
- A filing fee, if applicable. Make checks payable to "Court Administrator".

If you did not pay a filing fee when this case was first begun, you will need to pay the filing fee now. Contact the Court Administrator to find out the amount of the filing fee. If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask the Court Administrator for an In forma Pauperis application. You need to fill out this application and sign it. This application will be reviewed by a judge who will determine whether you must pay the filing fee. If the judge does not sign the form which waives the fee, you must be prepared to pay the filing fee or the Court Administrator cannot accept your forms.

## Step 7

### Appear in Court

You must go to court on the date set for the hearing. Be sure to be on time. Bring with you to the hearing your copies of the papers and any witnesses you want to talk to the judge. The hearing is very formal. You should be polite to everyone in the courtroom, and address the judge "your honor". Remember to talk to the judge, not the other party. Do not argue with the other party or be unnecessarily

critical of the other party. After the hearing, the judge will issue an order. The judge may issue the order at the end of the hearing or may send a copy of the order to you in the mail.